

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0119
International Fuel Tax Agreement (IFTA)
For The Tax Periods of 1995, 1996, AND 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. IFTA – Sufficiency of documentation

Authority: IFTA, Article XII, R1210.300, IFTA, P510, IFTA P520.100, IFTA, P530.100, IFTA, R1210, IC 6-8.1-10-9.

The Taxpayer protests the IFTA audit assessment resulting from Taxpayer's lack of fuel tax documentation.

II. IRP – Sufficiency of documentation

Authority: IRP Article XVII, 1702, IC 6-8.1-5-1, IC 9-28-4-6.

The Taxpayer protests the IRP audit assessment resulting from Taxpayer's lack of mileage records.

FACTS

Taxpayer was assessed tax as a result of an IFTA audit covering the periods of 1995 through 1997 and an IRP audit, for registration year 1997. The assessments resulted after the auditor determined that Taxpayer did not maintain records or documents with regards to fuel purchased or mileage for the periods in question. A hearing date was set after several attempts to set such date with Taxpayer. Taxpayer failed to appear for the hearing. More facts provided as necessary.

DISCUSSION

The department, representing a member jurisdiction of IFTA, requested taxpayer records pursuant to IFTA, P510:

The licensee is required to preserve the records upon which the quarterly tax return is based for four years from the return due date or filing date,

whichever is later, plus any time period included as a result of waivers or jeopardy assessments

IFTA P520.100 states: "Records shall be made available upon request by any member jurisdiction and shall be available for audit during normal business hours." Also, pursuant to IFTA. P530.100:

Failure to maintain records upon which the licensee's true liability may be determined or to make records available upon proper request may result in an assessment as stated in IFTA Articles of Agreement Section R1200.

In the event the licensee fails to make records available or fails to maintained the base jurisdiction may determine the tax liability of the licensee on the basis of the best information available to it. IFTA, R1210.

Taxpayer suggested in his initial letter requesting a hearing that the Paper Reduction Act mandates that small businesses should be exempt from audits. Taxpayer's assertions are baseless. The Paper Reduction Act pertains to the Federal Government.

IFTA, Article XII, R1210.300 states in relevant part:

The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive.

Taxpayer provides no evidence that assessments are in error.

Taxpayer also denied that the assessments are valid because the corporation has been dissolved. Again, Taxpayer's claim is groundless. The assessments were due and owing before the dissolution of the company. The officers and directors of a corporation effecting dissolution or liquidation shall make all tax payments due to the department and failure to do so does not foreclose the option to pursue collection of the assessments. IC 6-8.1-10-9.

FINDING

The Taxpayer's protest is denied.

II. IRP – Sufficiency of documentation

DISCUSSION

IC 9-28-4-6 states:

- (a) The department of state revenue, on behalf of the state, may enter into reciprocal agreements providing for the registration of vehicles on an apportionment or allocation basis with the proper authority of any state, any commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country.
- (b) To implement this chapter, the state may enter into and become a member of the International Registration Plan or other designation that may be given to a reciprocity plan developed by the American Association of Motor Vehicle Administrators.
- (c) The department of state revenue may adopt rules under IC 4-22-2 to carry out and enforce the provisions of the International Registration Plan or any other agreement entered into under this chapter.
- (d) If the state enters into the International Registration Plan or into any other agreement under this chapter, and if the provisions set forth in the plan or other agreements are different from provisions prescribed by law, then the agreement provisions prevail.
- (e) This chapter constitutes complete authority for the registration of vehicles, including the registration of fleet vehicles, upon an apportionment or allocation basis without reference to or application of any other Indiana law.

Additionally, IRP Article XVII, 1702 states:

Assessments based on audit, interest on assessments, refunds, or credits or any other amounts including auditor's per diem and travel shall be made in accordance with the statute of each jurisdiction involved with the audit of a registrant.

Accordingly, the department, representing a member jurisdiction of IRP, requested taxpayer records pursuant to IC 6-8.1-5-4 requirements:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records.

Applying the Indiana statute per IRP Article XVII, 1702; IC 6-8.1-5-1 states in relevant part: "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer does not provide any indication that the assessment is in error.

FINDING

The Taxpayer's protest is denied.